

to say that he did not take more active and earlier steps to protect his rights in the matter of the alleged agreement to purchase because he was busy in running his business — a statement which, in my view, surpasses credulity.

For the reasons stated, I dismissed the plaintiffs claim with costs, discharged the order of August 30, 1976 restraining the Registrar of Titles from registering the transfer of the premises in favour of the 3rd defendant and ordered an enquiry as to the damages suffered by the 3rd defendant as a result of that order on the plaintiff's undertaking as to damages.

Claim dismissed.

Solicitors: *Lewis & Co.; Ngan & Tan.*

**CHE NOH BIN YAACOB v.
SYARIKAT KILANG GETAH SENG HIN**

[O.C.J. (Mohamed Zahir J.) April 12 & May 19, 1980]
[Kota Bharu — Civil Suit No. 149 of 1977]

Employment — Damages — Whether worker can claim both under SOCSO Act and the common law — Scope of s. 31 of SOCSO Act, 1969 — Employees' Social Security Act, 1969, ss. 2(6), (10), (11), 15(1) & 31(ii).

The plaintiff in this case was employed at the defendants' rubber factory at Kota Bharu. In the course of his employment, the plaintiff's left fingers were drawn into a power operated grinding machine thereby crushing the four left fingers. As an insured person under section 2(11) of Employees' Social Security Act, 1969 (SOCSO), he received \$1,935.42 under the said Act. The present claim is for damages under common law.

Held, dismissing the plaintiff's claim: (1) SOCSO is not a temporary measure as can be seen from section 15(1) of the Act;

(2) section 31(ii) takes away the right of an injured employee to sue in court for damages.

CIVIL SUIT.

Datuk Wan Mustapha for the plaintiff.

Porres P. Royan for the defendants.

Cur. Adv. Vult.

Mohamed Zahir J.: The plaintiff claims for damages arising from an accident which occurred on April 23, 1975. He was employed at the defendants' rubber factory at 3¼ mile-stone, Jalan Kuala Krai, Kota Bharu. In the course of his employment, the plaintiff's left fingers were drawn into a power operated grinding machine thereby crushing the four left fingers, exposing the bones and tendons.

On the date of hearing, counsel for the plaintiff agreed that the plaintiff is an insured person under section 2(11) of Employees' Social Security Act, 1969 (SOCSO) and that the plaintiff had received \$1,935.42 under SOCSO and it was further agreed by both counsel that the machine through which the plaintiff received the injury comes within the Factories Act.

The defence pleaded that the accident was caused or contributed to by the plaintiff and in the alternative pleaded section 31 of SOCSO Act which reads as follows: —

A "An insured person or his dependants shall not be entitled to receive or recover from the employer of the insured person —

(i) any compensation under the Workmen's Compensation Ordinance, 1952, or

(ii) damages under any other law for the time being in force, in respect of an employment injury sustained as an employee under this Act."

B The injury comes under the definition of "employment injury" under section 2(6) of SOCSO Act which reads as follows: —

"(6) 'employment injury' means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment in an industry to which this Act applies."

C The Act is made applicable to Kota Bharu *vide* P.U.(B) 384 dated August 15, 1973 and the accident occurred in 1975.

Counsel for the defendants asks the court to dismiss the plaintiff's claim as contravening section 31 of SOCSO. I allowed both parties to submit on this point alone.

D Counsel for the plaintiff submitted that SOCSO Act gives a temporary measure in case of accidents in the course of employment where the accident was caused not by one person's negligence. He referred to section 15 of the Act and submitted that a rubber factory is not within the Act and that section 31(ii) of the Act does not take away the right of an injured person to sue under the common law.

E With respect, I do not agree with the plaintiff's counsel. Section 2(10) of the Act gives the definition of the word "industry" which reads as follows: —

"(10) 'industry' means any business, trade, undertaking, manufacture or calling of employers, and includes any calling, service, employment, handicraft or industrial occupation or avocation of employees."

F I think rubber factory comes under the definition of "industry". SOCSO is not in my view a temporary measure as can be seen from section 15(1) of the Act and I am of the opinion that section 31(ii) as it says takes away the right of an injured employee to sue in court for damages. In this case the plaintiff had already received the money paid to him under SOCSO.

G I dismissed the plaintiff's claim with costs.

Claim dismissed.

Solicitors: *Datuk Wan Mustapha & Co.; Shook*
H *Lin & Bok.*

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